IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 505/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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Mr. H.D. Dangre, Adv. for the appellant.
Mr. H.R. Dhumale, Adv. for the respondent.

CORAM : A.P. Lavande, J.
Dated : October 11, 2006

This second appeal has been preferred by the appellant-defendant against judgment and decree dated 3rd August 2004 passed by 3rd Adhoc Additional District Judge, Wardha in Regular Civil Appeal No.81/2000 dismissing the appeal filed by the appellant-defendant against judgment and decree dated 29.4.2000 passed by Civil Judge, Junior Division, Ashti in Regular Civil Suit No.33/1997.

The respondent-plaintiff filed the above suit seeking permanent injunction in respect of suit plot no.453 situated in Ward No.5 of Ashti, District Wardha (hereinafter

referred to as suit plot). The plaintiff claimed title to the suit plot by virtue of sale deed dated 10.12.1991 executed by the owner Annapurnabai Mokadam for consideration of Rs. 10,000/- and claimed that he has been in possession of the suit plot since the time of its purchase. On account of threats given by the defendant to disposses him, the plaintiff filed the said suit. The suit was contested by the defendant. The defendant claimed title to the suit plot by virtue of sale deed dated 18.9.1968 executed by Narayansingh Rajput, ex-owner of the suit plot. The defendant also claimed that he was in possession of the suit plot since 1968. The defendant also filed counter claim against plaintiff seeking declaration that the sale deed executed in favour of the plaintiff was null and void.

The trial Court, upon appreciation of the evidence oral and documentary, held that the plaintiff had proved his title and possession to the suit plot and the

defendant had neither proved title nor proved possession in respect of the suit plot and consequently, decreed the suit and dismissed the counter claim of the defendant. The lower appellate Court concurred with the findings given by the trial Court and consequently, dismissed the appeal filed by the defendant.

The only point urged by Mr. Dangre, learned counsel appearing for the appellant in support of his appeal is that the defendant having denied the title of the plaintiff even before filing of the suit, the suit filed by the plaintiff simplicitor for injunction without seeking relief of declaration was not maintainable. According to learned counsel, since the plaintiff had not sought declaration of title, the suit filed simplicitor for injunction was not maintainable and, therefore, both the Courts below erred in law in granting permanent injunction against defendant-appellant in support of his submission. Learned counsel relied upon the judgment

in AIR 1995 Allahabad 418 (Sri Dasnam Naga Sanyasi and another V. Allahabad and another).

Per contra, Mr. Dhumale, learned counsel appearing for the respondent submitted that it was not necessary for the plaintiff to seek declaration since the relief sought was only for permanent injunction against defendant based on title and possession. According to learned counsel, the fact that the plaintiff did not seek declaration of title, not fatal to the suit filed by the plaintiff for permanent injunction.

I have considered the submissions made by learned counsel appearing for the parties. Insofar as the findings given by both the Courts below regarding title and possession of the suit plot of the plaintiff is concerned, the same are based on proper appreciation of the evidence and, therefore, do not require any interference. The only point, which arises for consideration is whether the suit filed by the plaintiff simplicitor for permanent injunction without

seeking declaration was maintainable in law. In AIR 1969 Bombay 423 (Smt. Indumatiben Chimanlal Desai Vs. Union of India and another), learned Single Judge of this Court has held that a declaration may be implicit in the grant of a perpetual injunction. In view of the said ratio, in my opinion, the argument advanced by Mr. Dangre, has no merit. Moreover, in a suit for permanent injunction, what is relevant is whether plaintiff who claims to be in possession has better title to remain in possession than defendant. In case the plaintiff proves that he is in possession and that the defendant has no title to the suit property, the plaintiff on the strength of possession can get injunction against the defendant who has no better title. This has been laid down by the Apex Court in AIR 1972 Supreme Court 2299 (M. Kallapa Setty Vs. M.V. Lakshminarayan Rao).

In view of this clear ratio laid down by the Apex Court and in view of the concurrent findings given by both the

Courts below, the plaintiff-respondent is entitled to permanent injunction against defendant-appellant who has neither title nor possession in respect of the suit plot. Insofar as the judgment of Allahabad High Court relied upon by the appellant is concerned, it is pertinent to note that the same was delivered while disposing of an Appeal from order refusing temporary injunction. In the said judgment, the Allahabad High Court has not categorically held that failure to seek declaration of title is fatal to maintainability of the suit for permanent injunction filed by the plaintiff, in case the defendant claims title to the suit property. Therefore, the said judgment of Allahabad High Court does not advance the case of the appellant-plaintiff.

For the reasons aforesaid, I do not find any merit in the submissions made by learned counsel for the appellant. There are concurrent findings of fact as to the title and possession in favour of the plaintiff-respondent as regards the suit plot. In any

case, no substantial question of law is involved in the present appeal. Hence, the appeal is summarily rejected.

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In view of dismissal of second appeal, nothing survives in the application. Hence, the civil application is dismissed as infructuous.

JUDGE

A.